

This letter discusses taxpayers' rights regarding Notices of Tax Liability and issues relating to home rule sales taxes. See the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., the Taxpayers' Bill of Rights Act, 20 ILCS 2520/1 et seq., the Home Rule Municipal Retailers' Occupation Tax Act, 65 ILCS 5/8-11-1, and the Department's regulations regarding sales in interstate commerce at 86 Ill. Adm. Code 130.605. (This is a GIL).

May 12, 1999

Dear Xxxxx:

This letter is in response to your letter received April 26, 1999 by PERSON. PERSON has forwarded your letter to the Department for response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am a CPA with eight years of experience in public accounting and currently employed as a corporate controller and my wife is the owner of a small business. I have the following concerns and questions related to the Illinois Department of Revenue (IDOR) and laws enacted by the Illinois General Assembly:

(1) There is no simple recourse for a taxpayer when a notice of tax deficiency is issued by the IDOR in error.

There are occasions when the IDOR issues a notice of tax deficiency in error that includes an automatic interest and penalty calculation. The taxpayer is then required to perform research and provide documentation in order to prove that the error lies with the IDOR. Once this is done the IDOR simply makes an adjustment to the taxpayer's account. No compensation for the cost incurred by the taxpayer is offered or provided for determining the IDOR's error. However, if the error lies with the taxpayer, they are required to pay the tax plus interest plus a penalty ranging between 15% and 20%.

I don't know if this is a law or the IDOR's way of saying we don't make mistakes but if we do the taxpayer can't hold us accountable. Either way, what is the incentive for the IDOR to improve it's operations considering there are no consequences to them for errors, only taxpayers.

(2) I believe that Home Rule local taxes are unconstitutional.

Consider the following example:

Business A is a retailer required to be registered with IDOR for sales tax collection and is located in Springfield, Illinois. Business B is a retailer located in the state of Missouri and is not required to be registered with IDOR for sales tax collection. Customer C is located in Springfield, Illinois. State sales and use tax rate is 6.25%. Springfield local tax rate is 1%.

If business B located in Missouri makes a retail sale to customer C located in Springfield, Illinois then business B is not required to collect sales tax from Customer C. Customer C is required to self assess and remit use tax to the IDOR at the rate of 6.25% thereby avoiding the 1% local tax.

If business A located in Springfield, Illinois makes the same retail sale to customer C who is also located in Springfield, Illinois then business A is required to collect and remit sales tax to the IDOR at the rate of 7.25% (state rate of 6.25% plus local rate of 1%).

This common true-life example clearly puts business A at a disadvantage due to interstate commerce. It is my understanding that it is unconstitutional to put a business at a disadvantage due to interstate commerce yet this happens every day in the state of Illinois.

The preceding situations are real and happening every day throughout the state of Illinois. As a concerned resident and taxpayer of the state of Illinois I ask you to take these issues as seriously as I do and make the appropriate changes. Thank you for your prompt consideration.

Taxpayers that receive a Notice of Deficiency (NOD) or Notice of Tax Liability (NTL) from the Department may pursue several options if they disagree with the issuance of the NOD or NTL. While mistakes are rare, they do happen. Each NOD or NTL issued by the Department should have on it a phone number to call. If taxpayers believe a mistake has been made, the first thing to do is call the phone number on the NOD or NTL and explain why the NOD or NTL is in error. The Department will investigate the problem. The Department also has a Problems Resolution Division that can be contacted in the case of an error. We have set forth below additional options provided for by law.

One option is to protest the NOD or NTL at an administrative hearing. For your information, we have enclosed a copy of 86 Ill. Adm. Code Part 200, which is comprised of the regulations for Practice and Procedure for Hearings before the Illinois Department of Revenue. If taxpayers wish to protest the NOD or NTL at an administrative hearing, they must protest the NOD or NTL in writing within 60 days after issuance of the NOD or NTL, specifically requesting an administrative hearing. See 35 ILCS 5/908 or 35 ILCS 120/4. Under this option, taxpayers do not have to pay until litigation is completed. Taxpayers may also request Informal Review. See 86 Ill. Adm. Code 200.135, enclosed.

In the alternative, taxpayers may pay the liability, including penalty and interest, "under protest." If this option is chosen, taxpayers must follow the specific requirements set forth in the State Officers and Employees Money Disposition Act, 30 ILCS 230/1 et seq. This option allows taxpayers to proceed immediately to the circuit courts to litigate the issues.

Another option available to taxpayers is to pay the liability, including penalty and interest, without protest. This option allows taxpayers to file a claim for credit or refund after payment of the tax, utilizing the procedures outlined at 35 ILCS 5/909 or 35 ILCS 120/6 through 120/6c (see also the enclosed copy of 86 Ill. Adm. Code 130.1501). Taxpayers may request a hearing if their claim is denied, following the procedures outlined in 35 ILCS 5/910 or 35 ILCS 120/6c. It should be noted that there is a specific statute of limitations applicable to such claims.

In addition, no credit will be allowed for any amount paid to the Department, voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund is filed with the Department, or if paid in total or partial liquidation of a judgment or order of any court.

The Taxpayers' Bill of Rights Act, 20 ILCS 2520/1 et seq., sets forth the responsibilities of the Department with regard to taxpayers and provides remedies for taxpayers against whom the Department has taken wrongful action. For example, Section 4 sets forth the Department's powers and duties to protect the rights of taxpayers. Section 5 authorizes taxpayers to sue the Department if the Department intentionally or recklessly disregards tax laws or regulations in collecting taxes. Section 7 provides that fees for an attorney or accountant to aid a taxpayer in an administrative hearing relating to the tax liability or in court may be recovered from the Department if the taxpayer prevails in an action under the Administrative Review Law and the Department has made an assessment or denied a claim without reasonable cause.

With all due respect, we disagree with your assertion that home rule taxes are unconstitutional. In Illinois, retailers incur Retailers' Occupation Tax based upon gross receipts from retail sales and are required to collect the corresponding Use Tax from the retailers' customers. Local Retailers' Occupation Tax is incurred when a seller makes retail sales in a municipality, county, or other jurisdiction that imposes a local tax. Retailers in those locations are allowed by statute to reimburse themselves for their seller's liability by stating that tax as an additional charge to the customer. (See for example, 65 ILCS 5/8-11-1, that allows a retailer to reimburse himself for Home Rule Municipal Retailers' Occupation Tax [HRMROT] incurred under that Act.) That authority creates a corresponding duty on the part of purchasers to pay such reimbursing amounts to the retailers if those retailers use their statutory authority to collect such reimbursing amounts as a separately stated item (or in combination with the State Use Tax) from the selling price of the tangible personal property.

May 12, 1999

Since the HRMROT is imposed upon retailers making sales of tangible personal property in the municipality, out of state retailers are not subject to the tax. Therefore out of state retailers, even if they have nexus with Illinois such that they are required to collect state Use Tax from Illinois purchasers, have no HRMROT obligation and no need to request reimbursement of such from Illinois purchasers. This arrangement in no way disadvantages out of state retailers engaging in interstate commerce in Illinois. Whatever disadvantage there may be to Illinois retailers subject to HRMROT is not an impediment to interstate commerce. This is because sales within Illinois are not sales in interstate commerce. Receipts from sales by Illinois retailers wherein the retailer is obligated under the terms of the agreement with the purchaser to make delivery of the tangible personal property from a point in this State to a point outside this State, not to be returned to this State, and such delivery is actually made, are not subject to Illinois sales tax. See 130.605, copy enclosed. While we understand your concerns with respect to your perception that local retailers have a disadvantage, we suspect that the tax differential might be offset in many instances by the higher shipping costs associated with shipments from out of state.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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